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Atty. Dkt. No. YOR920010320US1
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REMARKS

In view of the following discussion, the Applicants submit that none of the claims now pending in the application are made obvious under the provisions of 35 U.S.C. §103. Thus, the Applicants believe that all of these claims are now in allowable form.

I. REJECTION OF CLAIMS 1-42 UNDER 35 U.S.C § 103

A. Claims 1, 4-5, 10-11, 14-15, 17, 20-23, 26-28, 31-32, 35-36, and 40-42

Claims 1, 4-5, 10-11, 14-15, 17, 20-23, 26-28, 31-32, 35-36 and 40-42 stand rejected as being made obvious by the Nepustil patent (U.S. Patent No. 6,240,454, issued May 29, 2001, hereinafter "Nepustil") in view of the Bhanot et al. patent (U.S. Patent No. 5,796,934, issued August 18, 1998, hereinafter "Bhanot"). In response, the Applicants have amended independent claims 1 and 32 in order to more clearly recite aspects of the invention. Claims 11, 14-15, 17, 20-23, 26-28, 31, and 41-42 have been cancelled without prejudice. Applicants do not concede that the subject matter encompassed by claims 11, 14-15, 17, 20-23, 26-28, 31, and 41-42 is not patentable over the art cited by the Examiner; rather, claims 11, 14-15, 17, 20-23, 26-28, 31, and 41-42 were cancelled solely to facilitate expeditious prosecution of the pending claims. Applicants respectfully reserve the right to pursue claims, including the subject matter encompassed by cancelled claims 11, 14-15, 17, 20-23, 26-28, 31, and 41-42 and additional claims, in one or more continuing applications.

The Examiner's attention is respectfully directed to the fact that Nepustil and Bhanot, singly or in any permissible combination, fail to teach, show or suggest offloading a processing request to any one of a plurality of offload servers if the load on a primary server exceeds a first threshold and throttling a processing request if the load on the primary server exceeds a second threshold, as positively claimed by the Applicants. By contrast, the Examiner acknowledges that "Nepustil does not explicitly indicate throttling the request based upon another threshold" (Final Office Action, Page 6). Bhanot similarly fails to teach or suggest this limitation.

Applicants' independent claims 1 and 32 specifically recite:

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1. A method, in a network comprising a primary server and a plurality of offload servers, for dynamic offloading of processing requests from said primary server to any one of said plurality of offload servers, the method comprising the steps of:

determining a load on said primary server;

if the load on said primary server is less than a first threshold, serving processing requests at said primary server;

only if the load on said primary server exceeds said first threshold, then offloading at least a portion of said processing requests to any one of said plurality of offload servers, wherein all of said plurality of offload servers are configured to process said processing requests and the at least a portion of said processing requests is the only work handled by said plurality of offload servers; and

if the load on said primary server exceeds a second threshold, throttling at least one of said processing requests. (Emphasis added)

32. A method for allocating processing requirements on an Internet Protocol network between a primary server and a plurality of offload servers, comprising:

periodically evaluating processing requests to determine a load on said primary server;

if said load exceeds a first threshold, for a predetermined period of time directing at least one processing request to any one of said plurality of offload servers, wherein all of said plurality of offload servers are configured to process said processing request and the at least a portion of said processing requests is the only work handled by said plurality of offload servers;

only if said load does not exceed said first threshold, directing said processing requests to said primary server; and

if the load on said primary server exceeds a second threshold, throttling at least one of said processing requests. (Emphasis added)

As neither Nepustil nor Bhanot teaches or suggests offloading a processing request to any one of a plurality of offload servers if the load on a primary server exceeds a first threshold and throttling a processing request if the load on the primary server exceeds a second threshold, Nepustil in view of Bhanot fails to render obvious the Applicants' independent claims 1 and 32. Furthermore, dependent claims 4-5, 10, 35-36 and 40 depend, either directly or indirectly, from claims 1 and 32, and recite additional limitations. As such, and for at least the exact same reason set forth above,

the Applicants submit that claims 4-5, 10, 35-36 and 40 are also patentable and not made obvious by Nepustil in view of Bhanot. As such, the Applicants respectfully request the rejection of claims 1, 4-5, 10, 32, 35-36 and 40 under 35 U.S.C. §103 be withdrawn.

2. Claims 2-3, 6-7, 12-13, 16, 24-25, 29, 33-34, and 37-39

Claims 2-3, 6-7, 12-13, 16, 24-25, 29, 33-34 and 37-39 stand rejected as being obvious over the Nepustil in view of Bhanot and further in view of the Swildens et al. patent (U.S. Patent No. 6,694,358, issued February 17, 2004, hereinafter "Swildens"). In response, the Applicants have amended independent claims 1 and 32 as discussed above in order to more clearly recite aspects of the invention. Claims 6, 12-13, 16, 24-25, and 29 have been cancelled without prejudice. Applicants do not concede that the subject matter encompassed by claims 6, 12-13, 16, 24-25, and 29 is not patentable over the art cited by the Examiner; rather, claims 6, 12-13, 16, 24-25, and 29 were cancelled solely to facilitate expeditious prosecution of the pending claims. Applicants respectfully reserve the right to pursue claims, including the subject matter encompassed by cancelled claims 6, 12-13, 16, 24-25, and 29 and additional claims, in one or more continuing applications.

As discussed above, Nepustil in view of Bhanot fails to teach or suggest offloading a processing request to any one of a plurality of offload servers if the load on a primary server exceeds a first threshold and throttling a processing request if the load on the primary server exceeds a second threshold, as recited in the Applicants' independent claims 1 and 32. Swildens fails to bridge this gap in the teachings of Nepustil and Bhanot.

Specifically, the portions of Swildens that the Examiner cites to teach throttling processing requests in response to a primary server load exceeding a second threshold at best teaches that latencies reported at different servers are compared to determine to which server a user request should be directed (See, e.g., Swildens at column 9, lines 25-30: "In an example, if the reported latencies are the same, NameServer 110 would resolve the domain name to customer web server 45 because the additional latency

between NetProbe server 670 and NameServer 110 is smaller than the latency between NetProbe server 675 and NameServer 110.”). Thus, Swildens does not teach evaluating a threshold at a primary server, but rather evaluating latencies at several equivalent servers to determine where latency is the smallest.

As none of Nepustil, Bhanot, and Swildens teaches or suggests offloading a processing request to any one of a plurality of offload servers if the load on a primary server exceeds a first threshold and throttling a processing request if the load on the primary server exceeds a second threshold, Nepustil in view of Bhanot and further in view of Swildens fails to render obvious the Applicants' independent claims 1 and 32.

Furthermore, dependent claims 2-3, 7, 33-34, and 37-39 depend, either directly or indirectly, from claims 1 and 32, and recite additional limitations. As such, and for at least the exact same reason set forth above, the Applicants submit that claims 2-3, 7, 33-34, and 37-39 are also patentable and not made obvious by Nepustil in view of Bhanot and further in view of Swildens. As such, the Applicants respectfully request the rejection of claims 2-3, 7, 33-34, and 37-39 under 35 U.S.C. §103 be withdrawn.

3. Claims 8-9, 18-19, and 30

Claims 8-9, 18-19 and 30 stand rejected as being obvious over Nepustil, Bhanot, and Swildens in view of the Gupta et al. patent (U.S. Patent No. 6,374,305, issued April 16, 2002, hereinafter “Gupta”). In response, the Applicants have amended independent claims 1 and 32 as discussed above in order to more clearly recite aspects of the invention. Claims 18-19 and 30 have been cancelled without prejudice. Applicants do not concede that the subject matter encompassed by claims 18-19 and 30 is not patentable over the art cited by the Examiner; rather, claims 18-19 and 30 were cancelled solely to facilitate expeditious prosecution of the pending claims. Applicants respectfully reserve the right to pursue claims, including the subject matter encompassed by cancelled claims 18-19 and 30 and additional claims, in one or more continuing applications.

As discussed above, Nepustil in view of Bhanot and further in view of Swildens fails to teach or suggest offloading a processing request to any one of a plurality of

offload servers if the load on a primary server exceeds a first threshold and throttling a processing request if the load on the primary server exceeds a second threshold, as recited in the Applicants' independent claims 1 and 32. Gupta fails to bridge this gap in the teachings of Nepustil, Bhanot, and Swildens.

As none of Nepustil, Bhanot, Swildens, and Gupta teaches or suggests offloading a processing request to any one of a plurality of offload servers if the load on a primary server exceeds a first threshold and throttling a processing request if the load on the primary server exceeds a second threshold, Nepustil in view of Bhanot and Swildens and further in view of Gupta fails to render obvious the Applicants' independent claims 1 and 32.

Furthermore, dependent claims 8-9 depend, either directly or indirectly, from claims 1 and 32, and recite additional limitations. As such, and for at least the exact same reason set forth above, the Applicants submit that claims 8-9 are also patentable and not made obvious by Nepustil in view of Bhanot and Swildens and further in view of Gupta.

Moreover, with respect to claim 8, the portions of Gupta that the Examiner cites to teach dropping requests to a server if load on the server exceeds a threshold at best teaches filtering responses from a server at a client. That is, rather than dropping requests from clients if a load threshold is met at the server, Swildens teaches that "responsive messages from a web server are filtered (i.e., "dropped") by the web agent, if they contain information that exceeds a selected threshold quantity or type parameter associated with the recipient client station ..." (See, e.g., Gupta at column 3, lines 16-20, emphasis added). Thus, Gupta does not teach dropping requests to a server if load on the server exceeds a threshold, as recited in the Applicants' claim 8.

In light of the above, the Applicants respectfully request the rejection of claims 8-9 under 35 U.S.C. §103 be withdrawn.

II. CONCLUSION

Thus, the Applicants submit that all of the presented claims fully satisfy the requirements of 35 U.S.C. §103. Consequently, the Applicants believe that all of the

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presented claims are presently in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

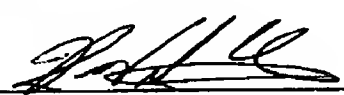
If, however, the Examiner believes that there are any unresolved issues requiring the maintenance of the present final action in any of the claims now pending in the application, it is requested that the Examiner telephone Mr. Kin-Wah Tong, Esq. at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

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Date

Patterson & Sheridan, LLP
595 Shrewsbury Avenue
Shrewsbury, New Jersey 07702


Kin-Wah Tong, Attorney
Reg. No. 39,400
(732) 530-9404